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SUBJECT: CAMBODIA'S ECCC MAKING GOOD PROGRESS

11. (SBU) Summary. During an October 1-5 visit to Cambodia, S/WCI and INR officials met with a wide range of interlocutors concerning the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC). ECCC officials from the office of Administration underscored budgetary gaps and unfilled funding requirements. In meetings with the international investigating judge and deputy prosecutor, both stressed the excellent cooperation with Cambodian counterparts and early progress by their offices. While cognizant of Cambodia's history of political interference in judicial affairs, NGO observers and legal professionals familiar with the ECCC's work believe that the potential good that can emerge from international involvement in the Tribunal outweighs a position of non-support. The unified message throughout each meeting was encouragement for USG assistance to the Tribunal. The UN Human Rights Office reported that a Special Representative of the Secretary General will likely be named to monitor the implementation of the UN-Cambodian Government agreement regarding the ECCC. ECCC judges (Cambodian and international) will return for a plenary session in November to agree on internal rules and procedures. End Summary.

ECCC: So Far So Good; But Budget Woes

12. (SBU) Sandra Hodgkinson, Deputy to S/WCI Ambassador Clint Williamson and INR/GGI/WCAD Chief Donald Braum visited Cambodia from October 1-5 to review the progress in establishing the ECCC, meet with a variety of interlocutors on potential USG assistance to the Court, and discuss prospects for the ECCC to serve as an example in the area of legal reform, judicial transparency, and respect for the rule of law. At the ECCC, they met with Peter Foster, Reach Sambath and Helen Jarvis of the Public Affairs Office, international investigating judge Marcel Lemonde, international deputy prosecutor Bill Smith, Craig Etcheson and Steve Spargo of the prosecutor's office, Director of Administration at the ECCC Sean Vissoth, and Linda Ryan from the ECCC's budget office.

13. (SBU) From the offices of the international investigating judge and prosecutor, the general sense was one of satisfaction for the excellent cooperation from their Cambodian counterparts. Craig Etcheson noted that despite having heard complaints from critics of the ECCC before joining the staff, his experience thus far has surpassed his expectations. The Cambodian judicial side has a strong desire to learn, and the overall quality of those Cambodian officials working at the ECCC is good. Cambodian prosecutor Chea Leang has participated actively with international

prosecutor Robert Petit in outreach programs and responded positively to Petit's mentoring in public speaking. Marcel Lemonde noted that while he and his counterpart did not share a common language, Cambodian investigating judge You Ben Leng has hired three well-qualified staff members who speak English and French well.

¶4. (SBU) In terms of their ability to work, Bill Smith said his office was already conducting interviews; Etcheson remarked that his current investigations adhere to the draft criminal code under RGC review. By October 20, the ECCC plans to publish draft rules and procedures after which they will give the NGOs 1-2 weeks to comment. In November, there will be a second plenary session for all the ECCC judicial personnel to vote and adopt internal rules and procedures. Smith provided a formal request to the visitors for USG documentation and image assistance to the court. (Note: A copy of the request has been faxed to the Department. End Note.)

¶5. (SBU) Lemonde agreed that having internal rules and procedures was necessary before he could open investigations. While acknowledging that the international system of justice is more common-law based than the civil law system under which Cambodian jurisprudence operates, Lemonde said that the two can be harmonized. Asked about the transparency of the investigation phase, Lemonde responded that he has met with the media to explain the procedures to be employed. However, because the nature of the crimes committed during the 1975-1979 period are publicly known, Lemonde believes he can be a little more open about the investigative phase to build the public's trust in the proceedings. Both the investigative judge and the prosecution team agreed that the supermajority formulation provided inherent safeguards so that the Cambodian side cannot prevent

PHNOM PENH 00001845 002 OF 003

investigations/prosecutions from going forward if the international side deems them worthy. The formula should also ensure that at least one international judge is on board for any acquittal.

¶6. (SBU) Helen Jarvis provided a tour of the courtroom and outlined remodeling plans for the building site including the addition of a small detention facility on the court's grounds. She and fellow PA officer Peter Foster explained that they conduct monthly meetings with the NGO community to ensure there is no overlap or duplication of NGO support programs for the ECCC, and that the information provided to the public regarding the ECCC is accurate. They both underscored the budgetary limitations of their work and the need for continued donor support to the NGOs if public outreach is to be effective. Director of the ECCC administrative offices, Sean Vissoth, continued this same theme, and encouraged the USG to contribute directly to the ECCC as appropriate to USG interests. He noted that the United States played a seminal role in the negotiation and successful conclusion of the UN-RGC agreement to establish the ECCC. Work is proceeding apace, continued Vissoth, with the recent arrival of Principal Defender Rupert Skilbeck, near completion of the draft rules and procedures, early work by the prosecution team, training programs for ECCC staff, and Japanese agreement to contribute prefabricated buildings for the temporary detention facility.

¶7. (SBU) Linda Ryan explained that the original three-year \$56.3 million budget was a plan, but the ECCC has the authority to shift funding based on changing priorities. When asked if the court could complete its mandate within the three-year time period, she said it was too soon to say. From an exclusively budgetary angle, she said the small staffing structure was a limitation, and the ECCC had inadequate training and travel allotments as well. Some shifting of funds will be needed in the short term to meet existing work demands, she noted. Current funding shortfalls on both the UN and RGC side amount to approximately \$4.2

million and \$5 million, respectively.

NGOs and Monitoring

18. (SBU) The visiting USG team met with a roundtable of civil society NGOs, and held separate meetings with the UN Human Rights Office, the Open Society Justice Initiative, and a former UNDP legal consultant to the ECCC, respectively. NGOs expressed a high degree of commitment to playing an active role in engaging the Cambodian public regarding the ECCC and its impact on the legal system. As they outlined their respective ECCC-related activities, it was clear that the ECCC's monthly coordination meetings are paying off as there was an effective distribution of labor with no overlap. Many of the participants at the roundtable were skeptical of how the trial phase would play out, but all agreed that the international community as well as concerned Cambodians should support the process to ensure its success. They maintained there is a huge potential benefit to Cambodia's broken legal system if the international legal personnel and staff can mentor their Cambodian counterparts and the lessons are imparted to the broader legal community and public. NGOs outlined familiar points of concern: transparency and lack of political will, inadequate plans for victim/witness support and protection, the unresolved question of whether former Khmer Rouge Minister of Foreign Affairs Ieng Sary will be prosecuted, and lack of internal rules and a criminal procedure code. There are also questions about the aftermath of the trials -- will the RGC subsequently grant clemency to those convicted? (Note: On the Ieng Sary issue, both the investigating judge and co-prosecutor agreed that this issue would undergo judicial examination by the court. End note.)

19. (SBU) The UN Office for Human Rights director Margo Picken explained that her office is awaiting the designation of a high profile legal professional from a civil law country to be designated as the Secretary General's Special Representative for monitoring the implementation of the UN-RGC agreement that established the ECCC. She also anticipates adding a staff member as a local monitor to the court process. Picken agreed with the view that there may be aspects of the ECCC that are flawed, but argued that donor engagement remains the best option to see that the ECCC accomplishes its objectives and meets the expectations of the Cambodian people.

PHNOM PENH 00001845 003 OF 003

19. (SBU) Heather Ryan from OSJI noted that she was encouraged by staffing selections -- particularly Craig Etcheson in the prosecutor's office and Steve Heder in the investigating judge's office. Both are experts on the Khmer Rouge genocide, are familiar with DC-CAM's holdings (Craig helped to establish DC-CAM), and are invaluable to getting the early phase of the ECCC's work done more rapidly than would ordinarily be the norm.

Donor Views

10. (SBU) At a Japanese Embassy-sponsored lunch that included representatives from the Australian and French missions, donors were unanimous in encouraging greater USG funding to the ECCC's work, both for NGO support as well as directly to the Tribunal. Japan emphasized many of the funding issues outlined during the August Friends of the ECCC meeting. Australia noted that the GOA had sponsored some NGO public outreach funding and had been encouraged by the ECCC's progress; France was also supportive of the ECCC's work and encouraged the USG visitors to take a positive message back to Washington. All noted that USG support to the Tribunal would add to its international legitimacy.

Comment

¶11. (SBU) Now that the investigating judges and co-prosecutors as well as their staff have begun to work, there is a greater basis for assessing the ECCC and its capability of living up to the expectations of the Cambodian public as well as the international community. During their meetings with the USG visitors, interlocutors were realistic regarding the challenge of moving forward quickly on a limited budget and as-yet undetermined roster of defendants, but optimistic that USG support and assistance funds would not be wasted given the potential for the trials to have a crucial impact on judicial reform in Cambodia. At this stage, there is a palpable sense of excitement among those working at the ECCC -- both on the international and Cambodian side -- that they are contributing to something historic in Cambodia, and a determination that the process will succeed.

¶12. (U) Neither Hodgkinson nor Braum had the opportunity to clear this message before departure.
CAMPBELL